



COMMENTS ON THE DRAFT ELECTORAL CODE OF THE REPUBLIC OF AZERBAIJAN

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REVIEW OF DRAFT UNIFIED ELECTORAL CODE OF THE REPUBLIC OF AZERBAIJAN

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Executive Office of the President of the Republic of Azerbaijan**

This commentary is based on the updated Draft Unified Election Code as of December 2002. The commentary is meant as a supplement to the two previous commentaries made by IFES and presented to Mr. Shahin Aliyev, Head of the Department of Legislation and Legal Expertise, Executive Office of the President of the Republic of Azerbaijan in March and July 2002.

The commentary is made article by article, and is prepared by IFES Consultant Berit Lindeman.

GENERAL PART.

16.2.

The reference is wrong. Should be 35.4., not 34.4.

16.3.

The reference should be 35.4.

16.4

The reference should be 35.6.

16.6.

Article 16 is new and regulates the cases where citizens do not participate in the voting. 16.6. goes even further, as no voter who are located in "areas outside the election constituencies where they are registered", will participate in election of deputies to the Milli Majlis or Municipal elections. Ships, hospitals, sanatoriums, rest homes and oil-production platforms are mentioned particularly. However, the provision might be applied to any voter being in "such places outside the boundaries of the election constituencies where they are registered". That would also include for example military voters. In IFES' opinion, this provision goes too far and can be abused because the wording is too general. It should be sufficient that particular voting stations are not established in these cases (Article 35.4.), not to deprive these voters of their right to vote.

17.7.

ODIHR/CoE¹ has been critical to that some of the provisions in Article 17.6. should be optional. IFES support this scepticism. All provisions of Article 17.6. should be compulsory, and first sentence of article 17.7. should be deleted.

19.7.

The reference to the *Constituency* Election Commission is a mistake, and it is already agreed that it should be removed.

19.8.

IFES is unsure of the purpose of this provision. Is the intention that the election commission should be workable when only 2/3 of its members are appointed? IFES cannot see the necessity for such a provision, it can be abused and should be removed if this interpretation is correct. IFES interpreted previously the Articles 19.8. and 19.9 as duplications of each other (see commentary March 2002).

19.13

Election Commissions at all level have now only one secretary. This provision should reflect this "...signed by ... *the secretary*"

The election commission members should also be able to review the minutes before the meeting, a provision should be included to secure that the members have access to the minutes at least 24 hours before the commission meeting. The "approval" must be made by means of a vote. If the word "decision" were to be applied, this would be clear.

22.1.

According to a previous draft, members of election commissions could not be members of a political party (previous 24.2.). This has now been removed, and corresponding amendment must be made to this Article. The same applies to *Article 22.4.2.*

22.4.2.

See 22.1.

24.3

IFES is still of the opinion that the composition of the election commissions at all levels must be reviewed, in order to secure better political balance. IFES refers to previous general and detailed comments made on the matter, and to the suggested models provided.

24.4

¹ In some cases the commentary makes reference to the "Joint Revised Preliminary Assessment Of The Revised Draft Election Code Of The Republic Of Azerbaijan Of 28 November 2002" by The Office For Democratic Institutions And Human Rights (ODIHR) of the OSCE and the European Commission For Democracy Through Law (Venice Commission, Council of Europe). In these cases the reference is abbreviated to *ODIHR/CoE*.

IFES supports the ODIHR/CoE suggestion that the Chairman, deputy Chairman and secretary are appointed from different political forces among the members of the election commission. The same applies to the Chairman and secretary of lower level commissions.

25.2.

As the current Central Election Commission questions its' right to instruct the lower level commissions, IFES think it is important to include provisions on this. The same must apply to the Constituency Election Commissions' right to instruct the Precinct Election Commissions.

29

Although Article 9.2 now regulates that the Central Election Commission will establish the order after which citizens who have left their residence places due to war or natural disasters (more precisely, in practice, the internally displaced persons (IDP's)), IFES is still of the opinion that election constituencies and precincts for these should be regulated directly in the Code. Principally, however, they should vote according to current (factual) residence. This also applies to Articles 35 (election precincts) and 46 (inclusion in voters' registers).

31.1

The Constituency Election Commission should also be obliged to publish preliminary results of the elections, shortly after their determination.

32.1.5

The wording of this provision (and that of 32.3.3, 32.4.6.) should be similar to that of 32.2.6.

35.

See comment on Article 29.

36.2.

The composition of the election commissions needs to be amended. See comment on Article 24.3.

A reference is missing.

36.6

This Article regulates the cases where the rules for appointing election commissions can be set aside, and has been widened compared to previous draft. In small precincts comprising of between 50 and 100 voters and in impassable places, the election commission can be formed by open vote in a general meeting of voters. In addition, the limitations of article 36.3. can be avoided. IFES is unsure of the necessity of this article, and should only be applied secondarily, in the cases where an attempt of forming the commissions according to the

general rules has failed. In addition, the commissions formed this way must be approved by the Constituency Election Commission.

Chapter 7

The provisions concerning transparency have been improved in the new draft. However, IFES is still concerned that the provisions will limit the transparency of the electoral processes. In addition, relevant amendments in the Law on Non-Governmental Organizations Article 2.4 barring public associations with foreign funding from observing elections must be made in order to meet international standards.

40.6

The distinctions between the rights of persons included in Article 40.2 to observe and other observers are unnecessary. According to this Article other observers, including international observers, only have the right to be present at the meetings of the election commission up to voting day if they have a specific permission. The Central Elections Commission will define the conditions for such permission. The full transparency of the work of the election commissions is important also for the period leading up to the elections, and this limitation should be abolished, securing the rights of all observers to be present at the meetings of the election commissions.

In addition, the Central Election Commission should not have the power to limit this right by means of regulations.

40.7.

This Article has been improved, and the Central Election Commission can no longer issue regulations on the conditions for registration as observers. However, IFES is concerned that registration of all observers will take place in the Central Election Commission. A procedure more easily applicable would probably be that domestic observers present the application for observation to the Constituency Election Commission in the constituency the observer is planning to observe. International observers should present the application to the Central Election Commission.

40.8

Representatives of mass media should have the right to participate in the meetings of the election commissions. The addition "*...in regard with election documents and vote counting process*" should be deleted.

40.9.

In line with the IFES recommendation that all observers should have the right to be present at election commissions' meetings and processing election documents, all observers, not only those mentioned in this article, need to be informed. This could for instance be solved by giving a public notice. Superior election commissions, authorized representatives and agents could in addition be informed by the means provided for in this article.

This Article makes reference to Article 19.16, that concerns the use of broadcast mass media for general voters' information, and the relevance is not clear. Article 19.17 concerns the information about a meeting for the members of the election commission, and this Article would be applicable for other having the right to be informed about the meetings.

40.15

According to this Article, an observer must have a badge containing information about the *voting station he is assigned to*. The necessity of being assigned to one particular polling station is not mentioned elsewhere. International observers must in any case have the right to visit any voting station on election day. See also Article 44.4.

41

ODIHR/CoE have reservations against including the principles of observation in the Code, and IFES supports that these should better be printed on the back of an accreditation card.

42.1

The rights of observers, including international observers, are still very much directly linked to the activities in the precinct election commissions on voting day. The right to be present in meetings of election commissions should explicitly be included here.

42.1.8.

Some confusion still remains concerning the fees for obtaining a photocopy of a protocol. The Article now says that an observer can ...*"make or obtain 1 copy and then photocopy and obtain other copies..."*. If the intention is that the first copy can be made or obtained free (without fee), then this must be said clearly.

IFES is still of the opinion that the fees should be abolished altogether, as they are difficult to handle in practice, and is difficult to see the value of introducing them.

42.4

When the observers submit their opinion on observation results to the Chairman of the Precinct Election Commission, this opinion should be enclosed to the protocol on voting results. The addition *"...or election outcomes"* should be deleted.

44.4

See comment on article 40.15.

44.9.

The right to meet with members of election commissions should also be included here.

45.1.

ODIHR/CoE recommends that the voters' registers should be open for observation throughout the year. IFES supports this idea.

Provisions clearly regulating the use of supplementary voters' registers are still lacking.

46.

The use of the term *citizen* is now problematic, because according to article 12.2 and 3 also non-citizens might have the right to vote.

See comment on Article 29.

48.2.

Another example of where the use of supplementary voters' registers should be regulated clearly.

57.4

This provision is unnecessary, as

- 1) It is very difficult to practice (in fact the Central Election Commission currently does not practice the provision), and can be practiced unequally,
- 2) It can be abused, in the sense that people can intentionally invalidate signatures by signing more than once, or be forced to do so,
- 3) A voter should not be obliged to expose his preference for one single candidate publicly.

58.6

ODIHR/CoE is of the opinion that there should be no maximum limit for the number of signatures a candidate can collect. IFES supports this, and this Article should be abolished. See in this connection also Article 60.2.3.

59.7.3

The reference to Article 57.4. should be removed, as this should in any case not be a reason for considering a signature invalid.

60.2.3

A simplified procedure for checking the number of valid signatures is recommended: The candidate should be allowed to submit as many signatures as s/he wishes (article 58.6.). The election commission checks the signatures until a sufficient number of valid signatures have been found. If necessary, all signatures should be checked in order to find a sufficient number of signatures. Only if there are not sufficient number of valid signatures after all signatures have been checked, the candidate can be refused registration.

60.3

The candidate or his/her representatives can correct mistakes and errors. The scope of errors that can be corrected is, however unnecessarily limited. The provision should give access to rectifying any mistake that could be reason for refusal according to Article 60.2.

63.1 and 63.2.

IFES is still of the opinion that the registration procedure for campaign groups for referendum is too cumbersome. Initiators will have to collect signatures in two steps, starting with the notification of initiative groups (articles 63.1. and 63.2.) the again collecting signatures about agreement to membership in the campaign group for referendum (Article 65.4 and 65.5). A few voters, for example 5, should be able to notify the election commission about an initiative group, Articles 63.1. and 63.2 should be amended accordingly.

65.4.

The number of signatures required for registering a nationwide campaign- group for referendum has been increased, from 51 000 to 60 000, with minimum 100 signatures from each of at least 60 constituencies. In comparison, a total of 45 000 signatures, with minimum 50 signatures from at least 60 constituencies is enough for registering a candidate for President (Article 181.1, see also comment on this). The same requirement should be applied for campaign groups for referendum.

65.5

See comment on 58.6.

68.2.

Same comment as for 60.2.

68.3.

Same comment as for 60.3.

69.2 and 69.3.

These two articles have been amended, and have as a result come in contradiction to each other. A clarification is needed, as "candidates... working in state bodies....are released from their employment" (69.2.) whereas according to 69.3. they can continue working.

What is meant by "persons appointed directly by the President of the Republic of Azerbaijan" who do not have to be released from their position (69.2.)? Does it mean Heads of Executive powers (excom) and members of the Cabinet of Ministers only, or does it include also those appointed by the President with the Milli Majlis approval (Prime Minister, General prosecutor, Ambassadors, judges, high-ranking military)? This also needs clarification. The main rule must in any case be that candidates are released from their positions in state, municipalities and media during the period of campaign. Exceptions must be few and clear.

69.5.

This safeguard has lost some of its sense, because it is related to the amended 69.3. See the comment above.

69.9

IFES is pleased to register that state funds have now been included in the code. A reference to the body deciding the level of the funds should be made.

88.7

The reference made to 87.2. and 87.3 should probably be 88.2 and 88.3.

88.8

Contenders of the campaign whose rights have been violated (whose campaign has been harmed by other contenders' violations) should also have the right to seek redress, by applying to the Central Election Commission or the Court.

93.4

This provision now states that returning donations to a donator is a right, not an obligation. The Articles in the Special sections must be harmonized to this fact. (131.1, 161.1, 193.1 and 229.1).

100.7

The first sentence contains the word *ballots*. Surely it should be *protocols*. The wording could also be clarified; compare to the first sentence of article 99.5, the wording could be identical, only replacing "ballot papers" with "protocols". IFES presumes this has been the intention.

100.13

This article provides that the third protocol should be placed on the polling station notice board after its completion.

IFES thinks that this should be moved to the articles regulating vote counting and tabulation at all levels of the election commissions for better overview and logical sequence. Thus, Article 100.13 should be moved to after Articles 106.8, 107.5 and 108.2.

101.6

The intention of this article is not quite clear. Is it referring to when a Voting card is issued in the Precinct Elections Commission, then this should be stated clearly. The translation uses the word "voting minutes", if this is correct then the word "minutes on issuance of voting card" should be used instead.

101.8.

The voter presenting a voting card less than three days ahead of the elections (see article 101.2) - should be included in the *supplementary* voters' list. A specific article regulating the use of supplementary voters' lists could also solve this.

The voting card must be left in the possession of the precinct election commission, it is unclear why the provision on this has been taken out of the draft. The voting card must then be attached to the (supplementary) voters' register where the voter has been added, the protocol or in other way be kept together for future verification. The voting cards must follow the protocol on voting results to the Constituency Election Commission and then to the Central Election Commission at the end of the counting and a provision on this be included in articles 106.7 and 107.3.

103

IFES is disappointed to see that there is no longer a provisions on transparent ballot boxes, as this would have been an efficient remedy to fight balloting fraud. IFES strongly recommends this to again be included in the draft.

103.2.

IFES suggests adding the following sentence: "The seals shall be plastic belts, each having a unique number".

104.6.

The provision on inking the finger of the voter with invisible ink, to be verified by the members of Precinct Election Commission before issuance of ballot paper was another remedy that would help fighting balloting fraud, and should be reinstated.

104.8

IFES recommends that the current procedure of stamping the ballot paper with the Precinct Election Commissions' stamp be included in this article. Signing the ballot should however not be necessary.

104.13

"...not be allowed to *avoid* voting." "Avoid" must be removed.

104.14.

ODIHR/CoE has correctly pointed out that law enforcement bodies only can be present in voting station to *restore* law and order, not to preserve law and order.

The article has now an addition, where voting shall be stopped when an official is in the voting station during the voting process. If the voting as stopped for more than two hours, the voting station shall be closed. IFES is of the opinion that the provision on closing the voting station after two hours is unnecessary and should be taken out of the draft. The voting station

should only be closed in exceptional circumstances if order cannot be restored. A decision on closing a voting station can only be made by higher-level commission (Constituency or Central Election Commission).

106.7.

The voters' cards submitted to the Precinct Election Commission upon inclusion in (supplementary) voters' lists must also be sent to the Constituency Election Commission, see article 101.8.

106.8.

The third copy must be posted at the voting station, see comment on article 100.13

107.

IFES is pleased to see that completion of protocols at the Constituency Election Commission is now regulated in a specific article. However, there are still no regulations on the procedure for receiving the protocols from the Precinct Election Commission

107.3.

The voters' cards submitted to the Precinct Election Commission or Constituency Election Commission upon inclusion in (supplementary) voters' lists must also be sent to the Central Election Commission, see article 101.8.

The article states that the protocol and other documents should be sent to the Central Election Commission without any delay. How will this happen, and who will accompany the documents? This would be regulated.

107.4

The third copy must be posted at the Constituency Election Commission, see comment on article 100.13.

107.5.

Last sentence: Along with the new system of numbered protocols a solution must be found concerning the protocol to be used during re-count of votes. The high level of security of the protocol must be maintained.

108.

As for 107, there should be procedures on receipt of the Constituency protocols and accompanying documents regulated in the Code.

109.2

The meaning of "integration of voting results" is not quite clear. It must be clear that the published preliminary result must be broken down per precinct, as well as per constituency.

110.9.

The implication of and reason for this provision is not at all clear. The kind of information that cannot be disseminated from the State Automated Information System must be specified, for example information on voters. IFES is however of the opinion that for example preliminary results and statistic materials can be published. A clarification is needed.

112.3.

Reference is made to 112 (meaning all complaints?) and 113 (sub points mentioned not existing). The references must be clarified in order to establish in what cases the complaint should be submitted to the court. The main rule must be that the plaintiff should also be able to submit the complaint to the election commission.

112.4.

The article makes reference to article 110.3., which is a mistake. IFES is unsure what article the reference should be made to - 112.3. ? This must be clarified in order for IFES to assess the grounds for rejection. In any case the grounds for rejection - and their limitations - must be applicable for both court and election commissions, which is not quite clear from this article. Also the election commissions cannot reject a complaint or direct it to the court, if the complaint has been filed with them.

112.9.

The limitations on when the election commission has the right to receive citizens' and officials information are unnecessary. The article should simply read: "The election commission has the right to receive citizens' and officials information and require necessary documents and materials while considering complaints."

112.11

The article should include that the decision on the complaint must immediately be communicated to the plaintiff. This would also secure that the plaintiff will get an individual answer to his/her complaint, which has not always happened in the past.

113.1.

Third bullet-point refers to "election of registered list of candidates". This must be removed, as this no longer applies.

113.2

IFES has also previously expressed concern that there are no alternatives for penalizing a registered candidate that violated the election code than warning and refusal of registration/de-registration. Alternative penalties, less burdensome should be sought for the less serious violations mentioned in this article. This would also make a reaction to the less

serious violation more likely to happen in practice, and is important in order to implement all aspects of the code properly.

113.2.3.

The reference to 88.5. has no relevance. This needs clarification.

114.

The relation between the final determination of the result and this article must be clarified. What is the deadline, if any, for cancelling the result of the election in accordance with 114? What is the relation to the decision of the Constitutional Court on election returns during elections to the Milli Majlis and Presidential elections? IFES is however of the opinion that there must be an access to challenge both the preliminary and the final result of the election both in higher level election commission and by the courts.

114.2

The reference to 113.2.3 with subsequent reference to 88.5. must be a mistake.

SPECIAL SECTION

128.3

The maximum referendum fund has been amended. A mistake probably lies in the limit 100.000 for article 77.2. referendum campaign groups, as it is lower than that for 77.3. campaign groups. A limit of 200.000 times the minimum salary would be consistent, also with candidates for Presidency that also operates on a national level.

131.1.

Contradicts 93.4., see comment on this.

137.

The previous 25% quorum has been taken out. As quorum must not necessarily be met for elections, a referendum is a different matter. The idea behind a referendum is that the citizens should make the important decision of for example constitutional amendments. In IFES opinion, a 25% quorum needs to be met.

138.1.

With reference also to the comments made under article 114, the deadline should allow for handling complaints. Alternatively, as ODIHR/CoE proposes; the final result cannot be announced till after all complaints have been decided on.

140.

This article concerns the publication of the decision made by means of the referendum, and mentions "official notification" about the results of the elections (probably 138.1). A provision ensuring the publication of the result on voting on all election commissions should be ensured, within a few days of the announcement of the final result of 138.1.

Section six:

It would not be unreasonable to include a right for political parties/blocks of political parties who have registered candidates in a significant number of constituencies for elections to the Milli Majlis to be able to present members with consultative voting rights also in Constituency Election Commissions and Central Election Commission. See for reference article 223.

147.3

This is a repetition of article 56.4 and can be removed.

147.4.

This is a repetition of article 56.5. and can be removed.

155.2.

The requirement on number of constituencies in which the party has registered candidates should be set to 50, not 60. This would also compare well (and logically) to articles 156.3, 157.2 and 158, where the limit is 50 constituencies.

156.4

To avoid confusion, the term *unified* election funds should be applied.

156.5.

Same as 156.4.

160.1.

See comment on 93.7., the articles are contradicting.

161.

The required number of votes has been increased to 10%, compared to previous 3%. 3% should be sufficient number, as 10% of the votes is very difficult to achieve.

171.2.

With reference also to the comments made under article 114, the deadline should allow for handling complaints. Alternatively, as ODIHR/CoE proposes; the final result cannot be announced till after all complaints have been decided on.

171.3.

See this in relation to comment to 171.2.

172.1.

Wrong reference is indicated. Should it be 171.4.and 5?

174.

The election outcomes and voting results should be published within a few days, for example three days, of the Constitutional Court's approval of the results. The deadline should be linked to the day of the approval, not the voting day as here. A 60 days deadline would in any case be way too late.

Second sentence: ... "by its official press"... can be removed, as we now have the means of publication regulated in Article 1.1.27. Also, in Article 140 there is no reference to the means of publication, and the procedures for different types of elections/referenda should be consistent with each other. Information from protocols of the Precinct Election Commissions must likewise be published, and included in this Article.

The comment on this Article also applies to Articles 208.1. and 2., and 246.

181.

The number of signatures required for registration of candidacy should be reduced again to 40 000.

193.1.

See comment on article 93.4.

194.

See comment on article 161.

208.1 and 2

See comment on article 174. A deadline should have reference to the day of determination of the outcome of the elections in the Constitutional Court, and be short. The deadline should be the same for both Milli Majlis elections and Presidential elections. IFES cannot see the reason for having different media-outlets and deadlines for the result of Constituency and Precinct Election Commissions.

210.1.

This has been amended to refer to "nationwide constituencies". "Multi-mandate constituencies" is correct.

210.2.

This has not been picked up before, but the population-frame must be as follows, in order to avoid overlap:

210.2.2 500 - 999

210.2.3. 1000 - 4 999

210.2.4. 5 000 - 9 999

210.2.5. 10 000 - 19 999

210.2.6. 20 000 - 49 999

210.2.7. 50 000 - 99 999

215.1.

The references to numbers also here need amending:

In articles 215.1.1. - 215.1.5. "more than" needs to be deleted and replaced by "or more" after the relevant figure of population.

217.1.

IFES supports ODIHR/CoE in replacing "none or only one candidate" by "less candidates than article 210.2. provides for"..

225.2.3.

The deadline of 25 days in this article contradicts article 69.9., that envisages 3 days after registration. The deadline here can be deleted under reference to article 69.9.

225.6.

There is a reference to "candidates registered for a single mandate constituency" that must be a mistake. In IFES' opinion, the intention must be to regulate election funds unified by political parties and blocks of political parties according to Article 225.5. Thus, "candidates registered for a single mandate constituency" must be replaced by "political parties and blocks of political parties". The Article is then similar to 156.4.

225.7

The term *unified* election funds should be maintained, in order to avoid confusion. Second sentence, placing a maximum limit to the total election funds appears unnecessary after first sentence. A limitation should rather be set for the expenditures of each of the candidates, as in Article 156.5.

229.1.

See comment on article 93.4.

230.

See comment on article 161. A 3% limit should apply also to municipal elections for consistency.

246.

Again, the deadline must be shortened to a few days after the determination of the final result of the elections, see also comment on 174, the wording of 146 and 246 should be consistent with each other.

By a mistake, there is still a reference to *Territorial* Election Commission. *Constituency* Election Commission is correct.